Supreme Court, U.S.
FILED
JUL 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

89-1779
NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH W. BOOKER,
PETITIONER

VERSUS

PAUL E. RILEY, JUDGE, ET AL.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO SIXTH CIRCUIT COURT OF APPEALS

PETITIONER REPLY BRIEF FOR WRIT OF CERTIORARI

BEULAH W. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

BEST AVAILABLE COPY

. LIST OF ALL PARTIES

Petitioner:	Beulah W. Booker
Respondents:	Paul E. Riley
	Gary T. Brinsfield
	Delco Moraine,
	Division of
	General Motors.

TABLE OF CONTENTS

	Page
LIST OF ALL PARTIES	i
TABLE OF CONTENT	ii
TABLE OF AUTHORITIES	iii
PETITIONER ANSWER TO RESPONDENT OBJECTION	1
CONCLUSION	13
CERTIFICATE OF SERVICE	18
PROOF OF SERVICE-AFFIVADIT	19

TABLE OF AUTHORITIES

Cases

Booker v. Riley
C-3-87-354

Bradley v. Fisher
347, 20 L. ed 641

Dennis v. Sparks
449 U.S. 24 (1980)

Exparte Virginia,
100 U.S. 339; 2 Harper James

Gregoire v. Biddle,
177 F .2d 579 581

Harris v. Deveaux,
780 F.2d 911 (11th cir. 1986)

Pearson v. Ray,
U.S. 386, 547 (1967)

Pulliam v. Allen,
466 U.S. 522 (1985)

Rankin v. Howard,
633 F .2d 844 (9th cir. 1980)

Randall v. Brigham,
74 U.S. 523

Others

42 U.S.C. 1981

42 U.S.C. 1983

42 U.S.C. 1985

Table of Authorities Continue

OTHERS

Section 4123.519 Ohio Revised Code

Section 4123.35 Ohio Revised Code

PETITIONER ANSWER TO RESPONDENT IN OPPOSITION TO BRIEF.

Petitioner states and the record will show that on 3-19-85, she complied with the Montgomery County Common Pleas Court order and filed a successful amended complaint. On 3-26-85, Defendant Delco Moraine answered the complaint. The Court stated, "it appears that the Plaintiff has substantially complied with Section 4123.519 and the motion to dismiss is overruled as Moot".

In Respondent Paul. E. Riley statement of the case his general complaint is that Petitioner is not an attorney but a pro se, however, she successful place her case in the court against five attorney of law by defendant Delco Moraine where

their motion for dismissal was granted as moot by the court.

In 1982, Petitioner was injuried by her employer, Delco Moraine, G.M.C. while performing her job. She filed for worker's compensation after her attorneys quit. The Bureau of Worker's compensation is a fund set aside for injuried employees, she filed in her motion to participate into the funds under Section 4123.35 Ohio Revised Code. The Defendant had more than three employees. Earlier Petitioner had been injuried by the same defendant, Delco Moraine, and had surgery on her right hand which was allowed by the Bureau of worker's compensation #746982-22.

The record will show that this case was ordered to go to jury trial on 6-24-86 by Judges Wolfe & Dodge

of the Montgomery County Common Pleas Court. The record will also show, as Petitioner has stated, once this case was transferred from Judge Dodge to Judge Riley, Defendant Delco Moraine attorney, Joseph P. Buchanan resigned from the case and Gary T. Brinsfield was added, immediately trouble began. This case is not complicated as Respondent stated nor it it rambling as he stated, however, the second day after Judge Riley and Gary Brinsfield took over the case, Brinsfield started to telling Petitioner subpoena witnesses the case had been dismissed. Respondents Riley & Brinsfield immediately started to undue and destroy the trial which had been set-up by Judges Wolfe & Dodge under Section 4123.519 Ohio Revised Code.

Respondent Riley have not denied

any portion or any parts of this complaint of conspiracy or deprivation nor discrimination, but he stated in his argument "the doctrine of judicial immunity is an established principle of common law which is followed by the federal courts and those of nearly every state jurisdiction. See, e.g., Randall v. Brigham, 74 U.S. 523 (1868); Dennis v. Sparks, 449 U.S. 24 (1980); Harris v. Deveaux, 780 F .2d 911 (11thCir.1986)".

Let the record show this was planned and executed by Respondents Riley, Brinsfield & Delco Moraine to destroy Petitioner complaint she filed in the court & Judges Wolfe & Dodge decision who are fellow judges of Paul E. Riley & judges over Montgomery County Common Pleas Court whereas Judge Riley was a visiting judge.

Respondent Riley further stated in his argument, "as early as 1872, the court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in excersing the authority vested in him, (should) be free to act upon his own convictions, without apprehension of personal consequences to himself". Bradley v. Fisher, supra at 347, 20 L. Ed. 646".

On 7-15-87, Petitoner filed a complaint of conspiracy 42 U.S.C. 1985, deprivation of rights 42 U.S.C. 1983 & discrimination 42 U.S.C. 1981, in the District court. On 7-31-87, Respondent Riley filed a motion to dismiss on judicial immunity which was sustained by the court and dismissed. However, in Judge Rice dismissal he stated, "Plaintiff could seek to add

Judge Paul Riley as a party Defendant whom to seek prospective injunctive relief, as a remedy for which there would be no judicial immuninty under Pulliam v. Allen, 466 U.S. 522 (1985)." However, Plaintiff did refile Judge Riley as a defendant still Judge Rice dismiss the case on judicial immunity. He stated in his first dismissal that, it has come to this court's attention that Judge Paul Riley was defeated in a primary election held in May 1988, and is, as of this date, no longer serving as a State of Ohio Common Pleas Court Judge." The record will show that Judge Rice dismiss the case against his own ruling that it couldn't be dismissed. Judge Rice further stated in his dismissal, there was some indication that Judge Riley & Brinsfield tried to get Plaintiff to change

her original complaint, this was evidence of conspiracy.

On 7-21-89, Petitioner filed a Notice of Appeal and pointed out the issues of Judge Rice dismissal on judicial immunity and defeating of Riley in the election and confirmed the harrassment of Riley & Brinsfield to Plaintiff. The court of appeals stated, "upon consideration, we find that there is no genuine issue of material fact & that the Defendants are entitled to judgment as a matter of law." Petitioner states these issues alone is a violation of Rule 17 (a) of theSupreme Court in pertinent parts, "When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same manner.... also 17 (c) in

pertinent parts, "When a state court or federal court of appeals had decided an important question of federal law which has not been, but should be, settled by this court." Pulliam v. Allen, supra; Booker v. Riley, et al, supra. The court of appeals affirmed the District Court decision of judicial immunity. On 5-14-90, Petitioner filed a Writ of Certiorari.

In Respondent Riley answer on 6-11-90, he cited as a defense, the Bradley v. Fisher court, supra. However, in Bradley v. Fisher, 13 wall 355, 347 20 L.E.d.646 (1872) "Powell noted that the Bradley court accepted the injustice doctrine of judicial immunity sometimes imposes because these injustices are ususlly mitigated by the ayialiability of appeal. But where a judicial official acts in

a manner that precludes all resort to appellate or other judicial remedies that otherwise would be avialable, the underlying assumption of the Bradley doctrine in operative.... "In sum I agree with Mr. Justice Steward that Petitioner judges actions were not "judicial", and that he is entitled to no judicial immunity from suit under 42 U.S.C. 1983, Id. 370."

Petitioner states this is the same way her case was dismissed by the district & appeals courts who denied her appeals rights because Judge Riley lost the election. She further states, Judge Riley and Gary Brinsfield conspired and undermined Judge Wolfe & Judge Dodge decision who are still judges in the court of common pleas of Ohio, however, Judge Riley is not a judge, through his actions he lost

his election. Petitioner feels Judges Wolfe & Dodge had a right to come to the District Court and explain why they acted upon their own convictions; an opportunity to set forth their reasons.

Rankin v. Howard, 633 F .2d 844 (9th Cir. 1980), "the Rankin court concluded that a judge's private juror agreement to decide in favor of one party is not a judical act, 633 f .2d at 847". Based upon the record, Judge Riley had a prior agreement with Gary Brinsfield who represented Delco Moraine, the same as in Rankin's. As in Bradley v. Fisher, supra, Petitioner was not able to use the court of appeals for justice because of the way the case was dismissed by Judge Rice. According to Mr. Justice Steward in Bradley v. Fisher, supra

Respondent Riley actions were not judicial and he is entitled to no judicial immunity from suit under 42 U.S.C. 1983. A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function; see, e. g. Exparte Virginia 100 U.S. 339; 2 Harper and James, The Law of Torts 1642-1643 (1956). "The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices".

Judge Riley conspired with Gary Brinsfield against Petitioner to deprive her of her constitutional rights to a fair jury trial which had been set up by Judge Wolfe and Judge Dodge is not a judicial act. Judge Riley exercise no discretion or individual judgment, he acted as a minister of his own prejudice and is entitled to no immunity. When Judge Rice dismissed this case, he was aware of this knowledge instead he granted the Defendants summary judgment under judicial immunity.

CONCLUSION

It is respectfully submitted and shown that the Respondent have failed to establish reasons why this Court should not grant Petitioner Writ of Certiorari. There are two special important reasons of two decisions by two different courts. (1) Judge Rice stated under Pulliam v. Allen, supra, that Respondent Riley did not have judicial immunity . He further stated Riley lost the election in May 1988, he was no longer a state of Ohio common plea court judge but granted him judicial immunity. Judge Rice further indicated there was some indication Riley & Brinsfield tried to get Plaintiff to change her complaint from Section

4123.519 Ohio Revised Code which had been set-up by two other state judges for a jury trial, after Defendant, Delco Moraine, motion for dismissal had been rendered as "moot" by Judge Dodge.

(2) The Court of Appeals confirmed the District Court decision and stated, "upon consideration, we find that there is no genuine issue of material fact and that the Defendants are entitled to judgment as a matter of law."

Respondent Riley action was not of a judicial officer but of his own ministerial act and deserve no judicial immunity under 42 U.S.C. 1983. Pearson v. Ray, 386 U.S. 547 (1967) Mr. Douglas stated, we should not protect a member of the judiciary "who is in fact guilty of using his

powers to vent his spleen upon others."

Gregoire v. Biddle, 177 F 2d 579, 581, in pertinent parts, "to deny the recovery to a person injuried by the ruling of a judge action for personal gain or out of personal motives would be "monstrous". Ibid... "It is necessary to exempt judges from liability for the consequences of their honest mistakes, but that is far different from saying a judge shall be immune from the consequences of any of his judicial actions, and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights.

Petitioner states Judge Riley never stated he made a mistake. Meaning he was aware of his actions. When Petitioner brought this to his

attention during the trial, he stated you can appeal to God, but this is my court and I do as I please not the law.

In Ex Parte Virginia, supra, " a judge is liable for injury caused by ministerial act." Petitioner states that all Respondents; former judge Paul E. Riley, attorney at law, Gary T. Brinsfield and Delco Moraine, General Motors Corporation be liable for conspiracy against her to overthrow two other judges decision which did injury her.

Petitioner pray that she be compensated for her injuries by these Respondents.

Petitioner further pray that she be granted worker's compensation

under Section 4123.35 Ohio Revised Code.

Petitioner pray that her Writ of Certiorari be granted under Rule 17 (a) and Rule 17 (c) of The Supreme Court of The United States of America.

Respectfully submitted,

Beulah W. Booker
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 1990, copy of the foregoing document were deposited in a United States mailbox, postage prepaid and served upon Thomas E. Jenks/Christopher F. Johnson Attorneys at Law 205 East First Street, Dayton, Ohio 45402 (Counsel for Defendant Riley).

Beulah W. Booker

Beulah W. Booker

Subscribed and sworn to before
me on this the 2nd day of July
1990.

James G. Miller

JAMES G. MILLER, Notary Public
In and for the State of Ohio
My Commission Expires Mar. 6, 1994